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OFFICE OF PETITIONS

In re : DECISION ON REQUEST
Kobayashi, et al. : FOR RECONSIDERATION OF
Application No. 10/766,487 : PATENT TERM ADJUSTMENT
Filed: January 29, 2004 : UNDER 37 C.F.R. §1.705(d)
Patent No. 7,235,612 :
Issued: June 26, 2007 :
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This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 C.F.R. §1.705(d)" filed August 23, 2007, requesting correction of the patent term adjustment (PTA) indicated on the patent due to the patent not issuing within three years of its filing.

The request for reconsideration of the patent term adjustment indicated on the patent is DISMISSED.

On June 26, 2007, the above-identified application matured into U.S. Patent No. 7,235,612. The patent issued with a Patent Term Adjustment of two hundred forty-two (242) days (336 days of PTO delay and 94 days of applicant delay).

The Office determined a patent term adjustment of two hundred forty-two (242) days based on an adjustment for PTO delay of three hundred thirty-six (336) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by ninety-four (94) days of applicant delay pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b).

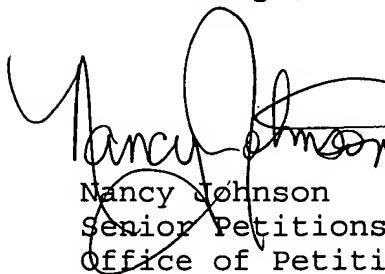
Patentees state that an additional PTO delay of 148 days should have been accorded due to the Office's failure to issue the patent within three years of filing.

Patentees' argument is not persuasive. Patentees are advised that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule, 65 Fed. Reg. 54366 (Sept. 18, 2000). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). See also Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A) 69 Fed. Reg. 34283 (June 21, 2004). Since the Office delay under 37 CFR 1.702(a)(1) is greater than the delay for 37 CFR 1.702(b), patentees will receive no additional PTA time.

In view thereof, the correct determination of PTA at the time of issuance is two hundred forty-two (242) days.

Receipt of the \$200 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



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Office of Petitions